



ITG News

Keeping First Nations Informed



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Message From The Director

The recent Consultation Listening meeting held in February in Arlington, Virginia included a discussion on whether the Internal Revenue Service uses "cookies" to track access to www.irs.gov, the web site we use to provide all customers with ready access to federal tax information. While we reassured the attendees that there is no tracking of access, and even posted a link at the bottom of the ITG landing page, the discussion made me realize that we should clearly articulate our overall concern for the privacy of Tribal tax information.

The Internal Revenue Code contains significant limitations on the accessibility of tax information. Quite simply, tax information is protected as some of the most confidential data that the federal government maintains. The IRS is prohibited from sharing information, with very narrowly defined exceptions. Those exceptions generally cover court ordered releases, limited information sharing with other taxation agencies, and releases of information to Congress under federal statutes that require such information to be provided in order to enhance tax compliance.

The statutes impose severe penalties on any IRS official who releases information to a third party, whether orally or in writing, beyond those situations where it is a legal requirement, or necessitated to obtain necessary information for tax administration requirements. Such a situation might include sharing information with IRS Counsel where necessary to obtain legal advice on a Tribal issue.

Independent of the legal requirements that protect your tax information, I want to state my firm commitment to protecting the privacy of any conversations that you may have with me or my staff. For example, those who have attended the Consultation Listening meetings held to date are aware that we do not collect names of attendees unless they wish to provide them. Where Tribes have requested one-on-one meetings to discuss individual matters, we have scheduled them in a private area, and have maintained those conversations as confidential.

We will continue to respect the requirements of federal law, as well as respect your rights as a sovereign entity. Your information, and our discussions, will not be shared with anyone except those with a "need to know".

As always, I am available to discuss any concerns you may have, by calling me at (202) 283-9736.



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Christie Jacobs



New Rules Outlined for ITIN Acceptance Agents

The Internal Revenue Service has announced new rules for individuals who participate in the Individual Taxpayer Identification Number (ITIN) Acceptance Agent program.

An Acceptance Agent is an individual, business or organization (college, financial institution, accounting firm, etc.) authorized by IRS to assist individuals in obtaining ITINs. Acceptance Agents review applicants' documentation, complete a certificate of accuracy, and forward the certificate and application to the IRS for processing.

The ITIN is for taxpayers who do not qualify for a Social Security Number but who still need the nine-digit identification number used by the IRS to process a Form 1040 and other tax schedules.

Revenue Procedure 2006-10 outlines the new rules and instructions for Acceptance Agents. The four major changes are:

- Acceptance Agent applicants are required to submit to suitability checks.
- Existing Acceptance Agent agreements will expire on Dec. 31, 2006; Acceptance Agents must reapply to retain their approved status.
- Acceptance Agent agreements must be renewed every fourth year.
- Acceptance Agents may request their names be added to a publicly available list that will be published by the IRS.

These changes are part of an on-going IRS effort to ensure that ITINs are used strictly for tax administration purposes. In recent years, the IRS has made a number of revisions to the ITIN program such as requiring the ITIN application be accompanied by a completed tax form and streamlining the number of identification documents that Acceptance Agents can use to confirm the ITIN applicant's identity.

Acceptance Agent applicants can download or print Form 13551, *Application to Participate in the IRS Acceptance Agent Program*, which is available on the IRS web site at www.irs.gov.

Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Julie Reese at (303) 231-5250, ext. 236.

Publication 4268—Employment Tax Guide for Tribes

Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees. You can download this comprehensive guide from a link on our landing page at www.irs.gov/tribes.



Common Compliance Problems Identified through Compliance Checks

Compliance Checks remain a valuable tool to assess the areas where tribes may have federal tax responsibilities, and help to mitigate potential problems. Our January 2006 issue introduced TEFAC— the Tribal Evaluation of Filing and Accuracy Compliance, which was designed to allow qualifying tribes to conduct their own self Compliance Check. Information on the entire Compliance Check process, as well as useful references on common tribal tax issues, can be accessed on our web landing page by clicking on “Enhancing Federal Tax Compliance”.

The following list shows the “Top 10” items that are surfacing via Compliance Checks, and may be useful to you in assessing your own situation. If you believe you may have any of the issues outlined below, you may wish to apply to conduct a self Compliance Check through our TEFAC program, the process for which is also outlined on our web site.

“The Top 10”

1. FUTA – tribes still making tax deposits and/or filing Forms 940 when they are not required to pay FUTA because they participate in State unemployment.
2. Noncompliance with Revenue Ruling 59-354 - Tribal council members' pay being handled incorrectly and reported on a Form 1099 instead of a Form W-2, or being reported on a Form W-2 with FICA, Medicare and income tax withheld.
3. Form 1099 problems
 - ◆ the forms were not prepared at all,
 - ◆ the forms were prepared incorrectly (amounts in the wrong box, etc.),
 - ◆ the forms were prepared but not submitted to IRS,
 - ◆ the incorrect copy was submitted to IRS,
 - ◆ not aware of the exception to filing on payments to corporations,
 - ◆ not aware of requirement to file 1099 for medical and legal expenses, even if the recipient is incorporated
4. Employment tax return filing/deposit problems
 - ◆ tax returns filed but no tax deposits were made,
 - ◆ deposits were made but no return was filed,
 - ◆ deposits were made to incorrect period,
 - ◆ deposits were made using the wrong timetable (e.g. monthly deposits when should be semiweekly),
 - ◆ unaware of the "next day" deposit rule,
 - ◆ Form 941 was filed with no Schedule B attached
5. Forms W-9 and W-4 are not being used, or are not being updated when necessary.
6. Unaware of requirement to backup withhold if no TIN provided prior to payment.
7. Payments to tribal members (committee members, gaming and non-gaming per capita) not reported on information returns, reported on the wrong information return, required withholding not done, or withholding done incorrectly.
8. Amounts on Forms W-2, W-3, 1096 and 941 don't reconcile.
9. Incorrect filing requirements for the entity, or there are other tribal entities that were not identified to the IRS as belonging to the tribe.
10. Unaware of magnetic media filing requirement, and unaware of FIRE system (Filing Information Returns Electronically).



Addressing Your Feedback

Many tribes have taken the time to tell us how we can better serve their federal tax administration needs. Participation by Tribes in the annual ITG Customer Satisfaction Survey, Consultation Listening meetings, and direct contacts, has enabled us to identify areas where we can improve the products and services that we provide for tribes, while still maintaining those that are valued as they currently exist.

Below are some changes that are currently being implemented as a result of your feedback, and other changes will soon follow:

- ♦ As new federal tax developments surface, we will be using our tribal e-mail distribution list to send information directly to you in a more timely manner.
- ♦ A headline area of our web site landing page will now focus on "Recent Developments" , and will provide a direct link to recent court cases, new IRS Counsel rulings and opinions, updated ITG web site postings, new ITG products, and newly enacted federal tax legislation that could impact tribes.
- ♦ We will be creating a "Helpful Hints to Avoid Penalties" guide to post on the ITG web site, with a blast e-mail distribution showing a link to that new guide.
- ♦ With your assistance, we will undertake a structured canvass to identify issues that are unique to your Tribe.
- ♦ At a minimum, we will notify tribes annually of the name and telephone number of their assigned ITG Specialist.

ITG is committed to meeting your needs as they are identified. We want to encourage your participation in the annual IRS Satisfaction Survey that will be mailed to you in late-summer 2006, since that survey is the primary mechanism to assist us in determining areas for improvement.

IRS Accepts Facsimile Signatures on Employment Tax Returns

As of July 1, 2005 the Internal Revenue Service started allowing corporate officers or duly authorized agents to sign employment tax forms by facsimile, including alternative signature methods such as computer software programs or mechanical devices.

This rules, outlined in Revenue Procedure 2005-39, reduces burden on the business taxpayer by simplifying employment tax filing and lowering the number of returns rejected by the IRS because of signature issues.

Rev. Proc. 2005-39 applies to the following forms:

- Any form in the 940 series, including Form 940, Employer's Annual Federal Unemployment Tax Return (FUTA); Form 941, Employer's Quarterly Federal Tax Return; Form 943, Employers Annual Federal Tax Return for Agricultural Employees; Form 945, Annual Return of Withholding Federal Income Tax; Form 941-C, Statement to Correct Information; and Form 941-SS, Employer's Quarterly Federal Tax Return;
- Form 1042, Annual Withholding Tax Return for US Source Income of Foreign Persons;
- Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips.

Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances, and eliminate the threats posed by individuals with schemes that appear "too good to be true" and often are.

If you are aware of financial impropriety, or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860, or via e-mail at tege.itg.schemes@irs.gov



How to Report Advanced Wages or a Loan

Is the money you are giving to your employees between paydays an advance on wages or a loan? If it is an advance on wages, are you reporting it properly? Most employers treat that money as an advance on un-earned salary and will not include it in income, but that may not necessarily be correct. Revenue Rulings 68-239 and 68-337 discuss advances as wages and advances as loans.

Revenue Ruling 68-239 addresses the question of the status of advanced payments actually or constructively made by the employer to the employees, for Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at the Source on Wages (federal income tax withholding). According to this revenue ruling, if an employer advances payroll payments to an employee with the obligation that the employee will perform services for the advance, that advance is considered "wages" for Federal employment tax purposes at the time of payment, **not** when the employee performs the services. The main reasoning behind this ruling is because if an employee receives an advance on wages, subsequently quits or is fired and is not obligated to pay that advance back, that amount would not have been included in income because the employee never performed a service.

Revenue Ruling 68-337 addresses the same question, however the circumstances are different. According to this revenue ruling, if an employer advances payroll payments to an employee with the obligation that the employee will perform services for the advance and the employee must acknowledge the advance by signing a note or loan. That advance is considered to be a loan and not included in wages until the employee performs services which pays off the note or loan. The main difference in this ruling is the employer makes the employee sign a note or loan, so if that employee quits or is terminated, he or she is still liable for the note/loan and will be obligated to pay in cash or have it withheld from their final "net" paycheck.

Here is an example: This Tribal Employer has a semimonthly pay period (paydays are on the 1st and 15th of the month). Employee John comes in on the 8th of the month and requests an advance of \$200.00 on his wages. According to Revenue Ruling 68-239, the \$200.00 advanced to John is included in income at the time of payment on the 8th of the month and there must be FICA and federal income tax withheld from that payment. The advance check amount will be less the FICA and income tax withholding amount, so his check could be around \$180.00, depending upon his individual circumstances.

Now let's say the same facts, except Tribal Employer makes John sign a note or loan document for the \$200.00 advance. According to Revenue Ruling 68-337, that amount is not income to John on the 8th of the month because he signed a note. He will receive a check for the full \$200.00, it will not be included in his income and he will owe the full amount.

The bottom line, if you are advancing wages to your employees and not including it in income nor are you deducting the employees share of FICA or federal income tax withholding amount at the time of the advance, you are not reporting the advances correctly.

How to Avoid an "Averaged" Failure-to-Deposit Penalty

IRS may assess an "averaged" failure-to-deposit (FTD) penalty of 2% to 10% if you are a monthly schedule depositor and did not properly complete the monthly liability section of Form 941 when your total adjusted tax liability shown on Form 941 exceeded \$2,500.

IRS may also assess an "averaged" FTD penalty of 2% to 10% if you are a semiweekly schedule depositor and your total adjusted tax liability shown on Form 941 exceeded \$2,500 and you

1. completed the monthly liability section of Form 941 instead of Schedule B (Form 941),



2. failed to attach a properly completed Schedule B (Form 941),
3. improperly completed Schedule B (Form 941) by, for example, entering tax deposits instead of tax liabilities in the numbered spaces.

The FTD penalty is computed by taking your total adjusted tax liability shown on Form 941 and distributing it equally throughout the tax period. As a result, your deposits and payments may not be counted as timely because the actual dates of your tax liabilities cannot be accurately determined.

An “averaged” FTD penalty can be avoided by reviewing your return prior to filing it. Follow these steps before submitting your Form 941.

- If you are a monthly schedule depositor, report your tax liabilities (not your deposits) in the monthly liability section shown on Form 941.
- If you are a semiweekly schedule depositor, report your tax liabilities (not your deposits) on Schedule B (Form 941) in the line that represents the dates your employees were paid. Verify that your total liability shown on Form 941 or the bottom of Schedule B (Form 941) equals your total adjusted tax liability shown on Form 941.
- Do not show negative amounts in the monthly liability section Schedule B (Form 941). If your prior period correction results in a decrease to your tax liability, reduce your liability for the day that you discovered the error by the tax decrease resulting from the error, but not below zero. Apply any remaining decrease to subsequent liabilities.

Correcting Forms W-2 and W-3

No matter how hard you worked on your year-end payroll, you may still have to make a correction to the Form W-2 for a few of your employees. That process just got a whole lot easier.

Now you can fill out the form on your computer screen, easily correct any typing errors, print out all the copies you need, give it to your employee, and file it with the Social Security Administration (SSA). This online form is available on the Web site of the American Payroll Association (APA) at <http://www.americanpayroll.org/news/formw2c.html>, and the SSA has approved it. You must have the http:// before your www or you won't be able to access the fill-in forms directly. You can access the APA web site without the http:// and click on the “Fill-in Form W-2c” link at the bottom of the first column.

Here are some points to remember:

1. Entries carry forward to all copies. The W-2c is a six-part form, but you only have to enter the data once on this fill-in form. When you print it, all six copies will print out so that you can give copies to your employee and file the others with the appropriate government agencies.
2. Each W-2c or group of Forms W-2c must be accompanied by a Form W-3c. Prior to 2003, this was not required for a W-2c that was correcting only an employee's name or social security number.
3. Correcting only state or local data? The SSA urges you not to send them any Forms W-2c that have no effect on federal information.
4. Corrections to any wages and tax fields may require you to change your next tax deposit and attach a Form 941c, *Supporting Statement to Correct Information*, to your next Form 941, *Employers Quarterly Federal Tax Return*. See the instructions for those two forms.

APA's strong partnership with the IRS and SSA allows it to prepare its classes and publications with the most accurate and up-to-date information to educate employers. IRS and SSA experts speak at many APA conferences and one-day seminars, including its Payroll Tax Forum. As a member of IRS' advisory committees, APA provides input toward improving the nation's wage and tax reporting process. More information about the APA is available at www.americanpayroll.org.

Federal Tax Calendar for Second Quarter 2006

April 2006

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3	4	5 * make a deposit for 3/29-3/31	6	7 * make a deposit for 4/1-4/4	8
9	10 Employees report March tip income to employers if \$20 or more	11	12 * make a deposit for 4/5-4/7	13	14 * make a deposit for 4/8-4/11	15
16	17 ** Make a deposit for March if under the monthly deposit rule	18	19 * make a deposit for 4/12-4/14	20	21 * make a deposit for 4/15-4/18	22
23	24	25	26 * make a deposit for 4/19-4/21	27	28 * make a deposit for 4/22-4/25	29
30						

May 2006

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3 * make a deposit for 4/26-4/28	4	5 * make a deposit for 4/29-5/2	6
7	8	9	10 * make a deposit for 5/3-5/5 Employees report April tip income to employers if \$20 or more	11	12 * make a deposit for 5/6-5/9	13
14	15 ** Make a deposit for April if under the monthly deposit rule	16	17 * make a deposit for 5/10-5/12	18	19 * make a deposit for 5/13-5/16	20
21	22	23	24 * make a deposit for 5/17-5/19	25	26 * make a deposit for 5/20-5/23	27
28	29	30	31			

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

June 2006

SUN	MON	TUE	WED	THU	FRI	SAT
				1 * make a deposit for 5/24-5/26	2 * make a deposit for 5/27-5/30	3
4	5	6	7 * make a deposit for 5/31-6/2	8	9 * make a deposit for 6/3-6/6	10
11	12 Employees report May tip income to employers if \$20 or more	13	14 * make a deposit for 6/7-6/9	15 ** Make a deposit for May if under the monthly deposit rule	16 * make a deposit for 6/10-6/13	17
18	19	20	21 * make a deposit for 6/14-6/16	22	23 * make a deposit for 6/17-6/20	24
25	26	27	28 * make a deposit for 6/21-6/23	29	30 * make a deposit for 6/24-6/27	

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule. NOTE: Deposits made through EFTPS are due one day prior to the dates listed.
 **= Make a Monthly Deposit if you qualify under that rule.

To add your name or e-mail address to our mailing list, please contact us via e-mail at Carole.M.Oller@irs.gov or call Carole Oller at (605) 787-5650